IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 215 OF 2007

The State of Maharashtra)
(through the Special Land Acquisition Officer)
No.1, Nashik))...Appellant

versus

1. Laxmibai Vithal Wagh)
2. Muktabai Vithal Wagh)..Respondents

WITH

FIRST APPEAL NOS. 216 TO 220 OF 1995 & 41 OF 1997

Ms. Geeta Mulekar, Assistant Government Pleader, for the State.
Mr. P.N. Joshi for the Claimants.

CORAM: **SWATANTER KUMAR, C.J.** &
J.P. DEVADHAR, J.

Judgment reserved on : December 10, 2007
Judgment delivered on: January 17, 2008

JUDGMENT (Per Swatanter Kumar, C.J.):

First Appeal Nos. 215 to 220 of 1995 have been preferred by the State while First Appeal No. 41 of 1997 has been preferred by the claimants against the same judgment of the Reference Court dated 21st April, 1994. Thus, it will be appropriate to dispose of these appeals by a common judgment since they arise from the same judgment.

2. The claimants are residents of villages Ambad and Pathardi of Nashik District. A preliminary notification was issued by the Competent Authority on 29th January, 1971, in furtherance to which notifications under Section 32 (2) of the Maharashtra Industrial Development Act, 1961 (hereinafter referred to as “the MIDC Act”), were issued on 28th November, 1971, 24th December, 1971 and 29th November, 1971. Further, notifications under Section 32 (i) of the said Act of 1961 were issued on 28th September, 1972, 21st February, 1972 and 14th January, 1975. Upon notice to the claimants, the Special Land Acquisition Officer No.1, Nasik, vide his award dated 22nd September, 1986, while awarding different amounts to different claims depending upon the location of the acquired lands, awarded the compensation as under.

L.R. No.	S.No.	Area acquired	Rate awarded by SLAO	Amount awarded
1. 165/87	235 of Pathardi	17200 sq.mtr.	Rs. 1.50 nps.	25,800/-
2. 166/87	38 of Ambad	430000 “	Rs. 3.60 nps.	1,54,800/-
3. 167/87	40 of Ambad.	16100 “	Rs. 3.60 nps.	66,635/-
4. 168/87	294 of Pathardi	100000 “	Rs. 4.00 nps.	4,00,000/-
5. 169/87	293/1 of Paghardi	117200	Rs. 4.00 nps	4,68,800/-

6.	170/87	293/2	of	12400	“	49,600/-
		292		10500	2/-	21,000/-

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3. Dissatisfied from the awarded compensation, the claimants preferred Appeals under Section 34 of the MIDC Act, praying for enhancement of the compensation awarded to them for acquisition of their lands. The learned Reference Court vide its judgment dated 21st April, 1994 increased the compensation payable to the claimants from Rs. 5.70 per sq. mtr. to Rs. 9.70 per sq.mtr. depending upon the location of the land, sustaining the classification of the land effected by the revenue authorities.

4. The State of Maharashtra felt that the amount awarded to the claimants was much in excess of what ought to have been awarded to them, challenged the correctness of the judgment of the Reference Court dated 21st April, 1994, filed Appeal Nos. 215 to 220of 1995. The claimants dissatisfied with the amount awarded by the Reference Court filed First Appeal No. 41 of 1997 for enhancement of the amount to the claimed amount of Rs. 50/- per sq.mtr.

5. In the judgment under appeal, the learned Reference Court recorded that the link road had already been established from Satpur Industrial Area which was adjoining Bombay-Agra Road. The present lands were acquired for the purpose of industrial establishment of Ambad. Uttam Nabaji Kahale, Witness No.1, deposed on behalf of the claimants that the lands were from both villages and are situated by the side of Bombay-Agra Road. While referring to the potential of the land, it was stated that the supply of water and good climate conditions existed on the land in question and had great potential of industrial and allied purposes. The contention raised before us on behalf of the claimants is that keeping in view the documentary evidence produced by them in the shape of Exhibits-31 and 32 respectively which are sale deeds in relation to sale of 548 and 480 sq.mtrs. respectively were agreed to be sold in the years 1968 and 1970, while the sale deeds were registered on 11th April, 1972. Having the sale deeds as the basis, the Reference Court should have awarded higher compensation particularly keeping in view the judgment of the High Court in First Appeal No. 882 of 1988 and others relating to acquisition of the land acquired for CIDCO project from the nearest villages and the Court had enhanced compensation at the rate of Rs. 18/- for Zone-I and Rs. 13/- for Zone-II in Nasik District.

6. It may be noticed at the very outset that the agreement to sell would not create any right or would not provide substantive evidence for determination of compensation. Both the sale instances i.e. Exhibits-31 and 32 were registered on 11th April, 1972 which is subsequent to the date of the registration but still the learned Reference Court in absence of any other direct evidence on record granted reasonable compensation to the claimants. Even under these two exhibits, the lands were sold at the rate of Rs. 8.54 and Rs. 9.12 per sq.mtr respectively while the trial Court has already granted compensation at the rate of Rs. 5.70 to Rs. 9.70 depending upon the location of the land in question. The judgment of this Court in relation to CIDCO project would again be not a direct evidence in regard to the matters in dispute. Section 4 notification was issued in the year 1974 i.e. nearly three years subsequent to the date of the notification in the present case. Even in that case the High Court had granted compensation at the rate of Rs. 13/- to Rs. 18/- per sq.mtr. which itself is a sufficient indication of the fact that the discretion exercised by the learned Reference Court is not vitiated either in law or on the basis of the evidence on record.

7. As far as the Appeals of the State are concerned, the State

hardly has a justification for even preferring the present appeals. The State chose not to lead any evidence before the Reference Court. Even no proper suggestions were made during cross-examination to the claimants witnesses who appeared in the witness box. Witness No.1, who was one of the claimants had stated about the valuation of the land , location and its potential. She had specifically referred to the CIDCO project and acquisition of the acquired lands. In her statement, it was stated that Government was recovering Rs. 40/- to Rs. 180/- per sq.mtr. from the Industries which are set up in the industrial area. In the cross-examination, no suggestion was made to this witness in regard to the location of the land or that the prices or that the compensation claimed was unreasonable. In fact, even in the cross-examination this witness stated that she was claiming Rs. 50/- per sq.mtr. in view of the increase in value of the land. Sureshchandra Maniklal Bhatewara, Witness No.2, appeared on behalf of the claimants proved Exhibits-31 and 32. The oral and documentary evidence proved by the claimants support to some extent the amount awarded by the learned Reference Court. The Reference Court was entitled to exercise its discretion while keeping in mind the various factors. The amount awarded by the Reference Court is just and proper and is in consonance with the statutory principles indicated in Section 33 (5) of

the MIDC Act read with Sections 23 and 24 of the Land Acquisition Act.

8. The learned Assistant Government Pleader appearing for the State has not been able to bring to our notice any error in the judgment of the Reference Court. The obligation lies upon the State to show on record what is the fair and reasonable market value of the land, if the value claimed by the claimants appeared to the State is not to be justified and proper. The State, as already noticed, has not produced any evidence on record.

9. In view of the above reasoning, we are unable to find any error of law or appreciation of evidence in the judgment of the Reference Court under Appeal. Resultantly, all the Appeals preferred by the State and the Claimants are dismissed, while leaving the parties to bear their own costs.

CHIEF JUSTICE

J.P. DEVADHAR, J.